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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,910	11/09/2001	Michael D. Cutbirth	CLW001	6896
25235 7590 05/03/2007 HOGAN & HARTSON LLP ONE TABOR CENTER, SUITE 1500 1200 SEVENTEENTH ST DENVER, CO 80202			EXAMINER AKINTOLA, OLABODE	
			ART UNIT 3691	PAPER NUMBER
			MAIL DATE 05/03/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/037,910

Applicant(s)

CUTBIRTH, MICHAEL D.

Examiner

Olabode Akintola

Art Unit

3691

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 19-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-21, 24 and 25 is/are rejected.
- 7) ☒ Claim(s) 22 and 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 7/11/2002.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election without traverse of claims 19-25 in the reply filed on 02/13/2007 is acknowledged.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karp et al (US 6832209) (hereinafter "Karp") in view of Louise Guey Lee (Wind energy developments: Incentives in selected countries, 1998) (hereinafter "Lee")

Re claims 19 and 24-25: Karp teaches method for creating a tax-advantaged investment fund comprising: forming an entity having a business form that enables the entity to passthrough tax benefits (fig. 3, RN {440}, col. 7, lines 17-33); establishing the tax-advantaged investment fund having a plurality of investors comprising a plurality of equity members (fig. 3, col. 9, line 55 through col. 10, line 9); collecting capital from the plurality of investors (col. 6, lines 59-65). Karp does not explicitly teach the use of the capital to purchase a plurality of wind energy projects having a return comprising a cash flow distribution, accelerated depreciation deduction and tax credits. However Karp teaches using the capital to purchase a plurality of financial instruments having a return comprising a cash flow distribution (fig. 3). Lee teaches investment

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in wind energy projects having returns comprising a cash flow distribution, accelerated depreciation deduction and tax credits (page 4 through page 7). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Karp to include wind energy investment as taught by Lee. One would have been motivated to do so in order to take advantage of the various incentives associated with wind energy projects by reducing investor tax obligations to the government and effectively lowering the investor's cost by the amount of the tax savings.

Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karp in view of Lee and further in view of Wind Energy Training Course (De Monfort University (hereinafter "De Monfort"))

Re claims 20-21: Karp and Lee are as discussed above. Karp does not explicitly teach collecting a debt component from at least one lender; and providing said debt component to said tax-advantaged investment fund to purchase a plurality of wind energy projects or providing said debt component directly to one of a plurality of wind energy projects. De Monfort teaches these limitations at pages 1-5. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Karp to include these features. One would have been motivated to do so in order to supplement the capital contributed by the investors for the expansion of the projects.

***Allowable Subject Matter***

Claims 22-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hache (US 6856969) teaches a dual tranche debt structure comprising a first amortization period and a second amortization period.

Federal Tax Issues Relating to Restructuring of the Electric Power Industry (Joint Committee on Taxation, October 15, 1999) teaches tax issues associated with wind energy projects financing.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Olabode Akintola whose telephone number is 571-272-3629. The examiner can normally be reached on M-F 8:30AM -5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

OA

A handwritten signature in black ink, appearing to read 'Alexander Kalinowski', with a stylized, flowing script.

**ALEXANDER KALINOWSKI  
SUPERVISORY PATENT EXAMINER**